

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A90 872 836 - Dallas

Date:

In re: JUAN HERNANDEZ-RAMIREZ

MAY - 6 1996

IN DEPORTATION PROCEEDINGS

APPEAL

INDEX

ON BEHALF OF RESPONDENT: Joshua Turin, Esquire
1349 Empire Central, Suite 302
Dallas, Texas 75247

ON BEHALF OF SERVICE: James T. Reynolds
District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
Entered without inspection

In a decision dated March 22, 1993, the Immigration Judge found the respondent deportable under section 241(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(B), for having entered the United States without inspection. The Immigration Judge also concluded that the respondent did not qualify for relief from deportation. The respondent has appealed from the Immigration Judge's decision. The appeal will be dismissed.

On January 26, 1992, the respondent pled guilty to the misdemeanor offense of illegal entry in violation of 8 U.S.C. § 1325. On March 1, 1993, the respondent, through counsel, conceded that he had entered the United States without inspection and requested an opportunity to evaluate his options for relief from deportation. Accordingly, the Immigration Judge scheduled a hearing for March 22, 1993. At the reconvened hearing the respondent testified that he was accompanied by a woman whom he was attempting to assist in entering the country illegally at the time of his entry without inspection in 1992. This woman is now his wife. 1/

1/ The respondent clearly stated that he was involved with helping his wife to enter illegally. The trial attorney stated that the respondent was also accompanied by two men at the time he was making an illegal entry; however, the respondent contested that fact.

The Immigration Judge proceeded to find that the respondent could not apply for an alien smuggling waiver under section 241(a)(1)(E)(iii), 8 U.S.C. § 1251(a)(1)(E)(iii), because he was not married to his wife at the time the smuggling incident occurred. On appeal, the respondent first argues that the Immigration Judge should not have found him deportable. Next, he challenges the Immigration Judge's finding that he is not eligible for a waiver under section 241(a)(1)(E)(iii). Finally, the respondent argues that the Immigration Judge should have granted him voluntary departure.

First, the respondent cannot now challenge his deportability for having entered the United States without inspection, since he already conceded this through counsel at the hearing (Tr. at 1). 8 C.F.R. § 3.1(d)(1-a)(i)(B). Second, the entire issue of the respondent's eligibility for a section 241(a)(1)(E)(iii) waiver is completely inapposite to this matter. The respondent was not charged with deportability under section 241(a)(1)(E)(i) of the Act for alien smuggling. He is therefore not in a position to seek a waiver of the alien smuggling ground of deportability pursuant to section 241(a)(1)(E)(iii). 2/

The relevance of the respondent's alien smuggling admission is that he is thereby precluded under section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3) from obtaining voluntary departure. In pertinent part section 101(f)(3) provides that an alien who is a member of the class of persons described under section 212(a)(6)(E) of the Act, which refers to alien smuggling, is not a person of good moral character. As good moral character must be shown for 5 years preceding the voluntary departure application, the respondent cannot qualify. Section 244(e) of the Act.

Based on the foregoing, the appeal will be dismissed.

2/ Had the respondent been so charged, he could have applied for the section 241(a)(1)(E)(iii) waiver, assuming that he had only engaged in smuggling activity with respect to his wife. Matter of Farias, Interim Decision 3269 (BIA 1996) (holding that section 241(a)(1)(E)(iii) waiver is available to lawful permanent resident aliens who attempted to smuggle in their spouse, parent, son or daughter even if the familial relationship arose after the smuggling incident, but exists at the time of the waiver application).

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ORDER: The appeal is dismissed..

Gertrude D. Villalpando
FOR THE BOARD